

Workers' Compensation Training Perspectives

Newsletter from the Office of Monitoring, Audit and Enforcement

Maine Workers' Compensation Board

October 2015

Volume 2, Number 2



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The general mission of the Maine Workers' Compensation Board is to serve the employees and employers of the State fairly and expeditiously by ensuring compliance with the workers' compensation laws, ensuring the prompt delivery of benefits legally due, promoting the prevention of disputes, utilizing dispute resolution to reduce litigation and facilitating labor-management cooperation.

Compliance Training for Employers/Insurers

A couple of seats are still available for the Board's next open training session October 29-30, at the Maine Department of Labor, 45 Commerce Drive in Augusta. The next session will be January 28-29, 2016 and is already starting to fill. Please contact Anne Poulin to reserve a spot at any of these sessions.

The Board continues to be busy doing on-site training for insurers, self-insurers, third party administrators, and employers. If you are thinking about on-site training for your organization, please contact Gordon Davis.

Forms Forum – WCB-9 Notice of Controversy

The employer/insurer must file a Notice of Controversy (NOC) with the Board to report the denial of a claim for incapacity (disability), death and/or medical benefit(s).

When a claim for incapacity or death benefits is in dispute, a NOC must be electronically filed (and accepted) on or before the 14th day payment is due under Section 205(2).

When an employee's claim is only for medical benefits, a NOC must be electronically filed (and accepted) on or before the 30th day after notice or knowledge of the claim for medical benefits. See Rule 8.2 for exceptions and further instructions.

A NOC must also be filed to dispute jurisdiction, to dispute coverage, or to for any other reason indicated in the full or partial denial codes in the WCB Forms Manual.

Some notes and reminders regarding the WCB-9 Notice of Controversy:

- If a NOC is filed for which a FROI has never been filed (medical only for example), the FROI must be filed in order to file the NOC.
- If a NOC is filed on a medical only claim, a new NOC must be filed to deny indemnity benefits if the claim later becomes lost time, even if the original NOC was a full denial.
- Forms WCB-2 and WCB-2B must be filed within 30 days of the date the employer was notified of the incapacity (box 20-b) for all lost time NOCs, even if no indemnity has been paid.
- If an indemnity NOC is filed late, often referred to as a "14 day violation," benefits must be paid from the date the claim was made through the date the NOC is filed (and accepted) and payment is mailed. A mandatory WCB-3 Memorandum of Payment must be filed. Unlike a regular MOP, a mandatory MOP need not be closed with a discontinuance, etc.
- If disputing one or more, but not all items on a medical bill, those items not in dispute must still be timely paid.
- Any additional relevant information, explanations, or clarifications should be indicated in the comments section. It should also be noted if the disability has been intermittent or sporadic.
- Although the NOC must be filed electronically, paper copies must still be sent to the employee and employer, and must be materially the same as the electronic filing.

Regarding the last item, the Board is currently working to create a .pdf file that will be sent back to claims administrators upon acceptance of a NOC which the CA must use as the paper copy to send to the employer and employee.

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The Board welcomes your feedback, suggestions, and other input regarding this publication or its training program. Please email Gordon Davis with your comments.

New Medical Fee Rule Effective October 1, 2015

There is a new Medical Fee Rule effective October 1, 2015. There are several significant changes that payors must be aware of for dates of service on or after October 1, 2015. Please refer to the recent *MAE News Special Edition* for reimbursement highlights. The complete rule and appendices, as well as the recent newsletter are available on the Board's website. Any questions or concerns should be directed to Kimberlee Barriere via email at Kimberlee.Barriere@Maine.Gov.

From the (e)Mail Bag – Questions from Adjusters

Q: I have a wage statement for an employee who was laid off for a few months and then began working again the week ending 9/18/15. His actual date of hire is in 2005. This first week back at work has much lower earnings than all the other weeks. Do I include that week in the calculation or not?

A: Because the week in question was unusually low, the audit department would allow its exclusion as a week with no earnings under §102(4)(B).

Q: I discovered I failed to adjust a max rate claim on July 1 of last year. Is there a penalty?

A: Failure to adjust to the new max rate on July 1 is subject to a penalty under §205(3) of \$50 per day for each day over 30 days late, up to a maximum of \$1,500.00, payable to the injured employee. Remember to adjust your max rate claims!

Q: We have been paying the employee TTD benefits for 12 weeks, and he has died as a result of the injury, leaving no dependents. Is any further payment due?

A: Yes, per § 355(14)(F), a payment is due to the Employee Rehabilitation Fund of 100 times the average weekly wage in the State with no offset for the TTD previously paid. File a WCB-4 discontinuance to close the MOP, then a final WCB-11.

Wage Statement (WCB-2) Reporting Reminder

Reminder – recently enacted legislation allows the WCB-2 Wage Statement to be filled out on the same basis as the employee is paid – weekly, bi-weekly, semi-monthly, monthly, etc. Pending the establishment of new WCB rules regarding wage statements, the Board still needs actual weekly earnings for the week of injury (week 52 on the form), the week of hire (if it is within the 52 weeks reported on the form), and any weeks with no earnings must be so indicated, as these all may potentially affect AWW calculation.

Adjusting Bi-Weekly Indemnity Payments

If you are paying varying partial weekly indemnity benefits to an employee who is paid on a bi-weekly basis, it is acceptable to pay an estimated benefit for the first week, then adjust the next payment to actual when the payroll information for the two week period is received. Bear in mind that the estimated payment should not be unreasonably low, and also that recovery of overpayments is prohibited unless repaid voluntarily by the injured employee.